IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.8 of 2008

Decided on:January 09, 2008.

State of Himachal Pradesh ***…Petitioner.***

VERSUS

Joginder Singh ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Petitioner : Mr.M.L.Chauhan, Addl.A.G.

For the respondent :

Kuldip Singh, Judge (Oral)

This is an application of the State seeking leave to file appeal against the judgment dated 27.9.2007 passed by learned Chief Judicial Magistrate, Bilaspur in case No.225/2 of 2002 acquitting the respondent under Sections 279, 337 I.P.C.

2. The prosecution case, in brief, is that PW-1 Surender Sood on 19.7.2002 was on his way from Kullu to Ludhiana along with his father Mohan Lal Sood and mother Smt.Satya Devi in Tata Indica Car No.HP-17A-0003. At place Sungal at about 10.45 A.M. the respondent came from Bilaspur side driving bus bearing registration No.HP-33-7630 in high speed and hit the car on the side and Smt.Satya Devi received simple injuries. The respondent was overtaking a vehicle in high speed and due to this reason accident took place. The police was informed telephonically and Investigating

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Whether the reporters of the local papers may be allowed to see the judgment? Yes

Officer Kishan Chand reached the spot and recorded the statement under Section 154 Cr.P.C. of PW-1 Surender Sood and on that basis F.I.R. Ext.PW-8/C came to be registered at Police Station, Sadar Bilaspur. During investigation, spot map Ext.PW-8/A was prepared. Both the vehicles were taken into possession and got mechanically examined. After completion of investigation, challan was submitted in the Court and notice of accusation was put to respondent under Sections 279, 337 I.P.C. to which he pleaded not guilty and claimed trial. The prosecution examined eight witnesses. The respondent was examined under Section 313 Cr.P.C., he denied all allegations against him but did not lead any evidence in defence. The learned Chief Judicial Magistrate acquitted the respondent on 27.9.2007. Hence, this application seeking leave to file appeal.

3. The allegations against the respondent are that he was driving the bus at the time of accident on wrong side of the road in high speed. PW-1 Surender Sood and PW-4 Mohan Lal Sood have not stated the speed of the bus. The learned Chief Judicial Magistrate has rightly recorded a finding that merely by saying that the bus was in high speed is not sufficient to prove rash or negligent driving on the part of the respondent. It has also been observed by the learned Chief Judicial Magistrate that in statement of PW-1 Surender Sood Ext.PW-1/A recorded under Section 154 Cr.P.C. nothing has been stated that respondent was driving the bus on the wrong side of the road. The vehicle, which was being overtaken by the respondent, has not been disclosed in the statement under Section 154 Cr.P.C. PW-4 Mohan Lal has not even stated that respondent was

overtaking any vehicle. The prosecution case is that mother of complainant received simple injuries but she was not medically examined. It has been noticed by the learned Chief Judicial Magistrate that PW-8 Kishan Chand, Investigating Officer, has admitted that the speed of the car was fast and there were skid marks of the car tyres on the road covering 100 feet. The learned Chief Judicial Magistrate has taken a possible view from the material on record. The prosecution has failed to make out any case for grant of leave to file appeal against the impugned judgment. Hence, leave to appeal refused and the petition is rejected.

January 09, 2007 ***(Kuldip Singh), J.***

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